IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 6702 of 2007()

CRMP.9490/2007 of J.M.F.C.-III, PUNALUR
CR.NO.92/07 OF PATHANAPURAM EXCISE RANGE

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PETITIONER/ACCUSED NO.8

C.M.MOHANAN, S/O. CHANDRAN,
ARCHANA BHAVAN, PLAKONAM MURI, PUNALUR VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.RENJITH B.MARAR
SRI.L.RAJESH NARAYAN
SMT.LAKSHMI.N.KAIMAL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE EXCISE INSPECTOR, PATHANAPURAM EXCISE RANGE,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007 ALONG WITH BA.NOS.6696 & 6699 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NOS.6702, 6696 &
6699 OF 2007

Dated this the 21st day of November, 2007

ORDER

These applications are for regular bail. The common petitioner faces allegations in three crimes – one registered by the Kunnikode Police Station and two others registered by the Pathanapuram Excise Range.

2. The petitioner is arrayed as the 12th accused. Altogether, 14 persons have been arrayed as accused by now. Accused 11 and 12 are the licensees of a group of toddy shops. The 1st accused is allegedly a benami licensee who carries on business on the basis of a licence issued in the name of accused 11 and 12. They (A11 & A12) together are the group licensees.

3. The crucial allegation raised is that on 28/8/07 - a dry day, on account of Onam, the licensees/those, who run the toddy shop on their behalf, distributed free toddy to the

consumers. The consumers flocked for the consumption of such toddy. Excessive quantities of such toddy available were consumed by the consumers. This led to two of them meeting with their death and many others suffering ailments. Crimes were registered by the Kunnikode Police Station in respect of unnatural death of two persons. All the crimes are now being investigated by the CB CID. The petitioner was arrested on 28/9/07. One litre of toddy which was kept for vending/ distribution at the toddy shop was seized. That, on chemical examination, is seen to contain 22.49% of Ethyl alcohol. It is the case of the prosecution that self-generated alcohol in toddy could never have exceeded 8.1% scientifically and therefore the excess alcohol found present in the sample of toddy clearly shows that the external alcohol was added to toddy which was distributed free from Toddy Shop No.14 of which the petitioner was the licensee.

4. The learned Public Prosecutor submits that the police do also rely on the report of the Chemical Examiner and opinion of the medical expert. Viscera of the deceased persons also show that the consumption of natural toddy which does not

offend Sec.57(a) of the Kerala Abkari Act could never have led to presence of so much Ethyl alcohol in the blood of the deceased. The petitioner was arrested on 28/9/07 in the police case by the CB CID. Investigation is in progress.

5. Crime Nos.92 and 93 were registered at the Pathanapuram Excise Range on the same day. When information about the incident of consumers falling sick was received, the officials of the Pathanapuram Excise Range conducted a search of premises and recovered 35 litres of spirit from the property near the toddy shop in question. Analysis of the contents of the said container show that it was spirit having 35.5% of Ethyl alcohol in it. That crime is now being investigated by the Pathanapuram Excise Range. The arrest of the petitioner has been shown in that crime also on 18/10/07.

6. Crime No.92/07 of Pathanapuram Excise Range was also registered on 28/8/07. A mug was recovered from the place where the toddy was allegedly distributed free to the consumers. That was sent for chemical examination. It is in respect of that that Crime No.92/07 was filed. The petitioner's arrest has been recorded in the said crime also.

7. All the crimes registered by the police in respect of the incidents which took place on 28/8/07 have been consolidated by the police and a common investigation is going on in Crime No.357/07. In respect of the two crimes registered by the Excise Department, request has already been made, it is submitted, that the investigation be entrusted with the CB CID.

8. The learned counsel for the petitioner submits that, at any rate, the allegation under Sec.302 of the IPC is not justified at all. The petitioner cannot be attributed the culpable and contumacious state of mind necessary to attract the offence punishable under Sec.302 of the IPC at any rate. The petitioner may, in these circumstances, be granted regular bail, submits the learned counsel for the petitioner. Though many other contentions were also raised in the course of the arguments, the learned counsel for the petitioner does not press those contentions and only prays that he may be given leave to raise those contentions at the appropriate stage.

9. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that, at any rate, the petitioner cannot avoid the liability under Sec.57(a) of the Abkari

Act. The learned Public Prosecutor, of course, does not make any concession. He contends that the charge under Sec.302 of the IPC or at least, Sec.304 of the IPC would certainly lie against the petitioner. The learned Public Prosecutor submits that, at any rate, in the facts and circumstances of this case, the petitioner is not entitled to be enlarged on bail prior to 28/11/07 on which date alone the period under Sec.167(2) of the Cr.P.C. would expire, even assuming that only the allegation under Sec.57(a) of the Abkari Act alone would lie against the petitioner.

10. At the present stage, I shall not embark on a detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am satisfied that the petitioner is entitled to be enlarged on bail in so far as the allegation under Sec.302 of the IPC is concerned. I am further satisfied that subject to grant of the maximum period available to the Investigator to complete the investigation for the offence under Sec.57(a) of the Abkari Act, the petitioner can be granted regular bail. That period would expire on 27/11/07 he having been arrested on 28/9/07. I am satisfied that the petitioner can be granted regular bail in all these three crimes

subject to appropriate terms and conditions.

11. <u>In the result:</u>

(a) These applications are allowed. The petitioner shall be released on bail in all the three cases on the following terms and conditions:

(i) The petitioner shall not be released from custody on the strength of this order prior to 27/11/2007.

(ii) The petitioner shall execute a bond in each case for Rs.2,00,000/- (Rupees two lakhs only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioner shall make himself available for interrogation before the Investigating Officer in the police case on all Mondays, Wednesdays and Fridays between 10 a.m. and 12 noon for a period of three months from the date of his release and thereafter as and when directed by the Investigating Officer in writing to do so.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge